

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ASAF EREZ,

Plaintiff,

v.

CHAD STEUR d/b/a CHAD STEUR
LAW, LLC; CHAD STEUR LAW, LLC,

Defendants.

Case No. C12-2109RSM

ORDER GRANTING IN PART AND
DENYING IN PART THE PARTIES'
CROSS-MOTIONS FOR SUMMARY
JUDGMENT

I. INTRODUCTION

This matter comes before the Court on the parties' Cross-Motions for Summary Judgment. Dkts. #29 and #30. The parties seek judgments as a matter of law with respect to alleged violations of the Fair Debt Collection Practices Act ("FDCPA"). Having reviewed the record before it, and neither party having requested oral argument on its motion, the Court GRANTS IN PART and DENIES IN PART the parties' motions as discussed herein.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). In ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter, but "only determine[s] whether there is a genuine issue for trial." *Crane v. Conoco, Inc.*, 41 F.3d

1 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O'Melveny & Meyers*, 969 F.2d
2 744, 747 (9th Cir. 1992)). Material facts are those which might affect the outcome of the suit
3 under governing law. *Anderson*, 477 U.S. at 248.

4 The Court must draw all reasonable inferences in favor of the non-moving party. *See*
5 *O'Melveny & Meyers*, 969 F.2d at 747, *rev'd on other grounds*, 512 U.S. 79 (1994). However,
6 the nonmoving party must make a "sufficient showing on an essential element of her case with
7 respect to which she has the burden of proof" to survive summary judgment. *Celotex Corp. v.*
8 *Catrett*, 477 U.S. 317, 323 (1986). Further, "[t]he mere existence of a scintilla of evidence in
9 support of the plaintiff's position will be insufficient; there must be evidence on which the jury
10 could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 251.
11

12 III. BACKGROUND

13
14 The sequence of events leading up to the matters at issue in this case is undisputed. On
15 December 11, 2012, Plaintiff filed an Amended Complaint, alleging several violations of
16 FDCPA. Dkt. #3. The parties do not dispute that Plaintiff is a consumer as defined by 15
17 U.S.C. § 1692a(3), Plaintiff's alleged debt is a consumer debt as defined by 15. U.S.C. §
18 1692a(5), and Defendants are debt collectors as defined by 15 U.S.C. § 1692a(6). On May 25,
19 2012, Defendants sent a letter to Plaintiff in an attempt to collect a debt. Dkt. #29-2 at ¶ 3 and
20 Ex. A. More than 30 days later, Defendants left two voice mail messages for Plaintiff. The
21 first message was as follows:
22

23
24 Asaf, my name is Courtney calling with Chad Steur Law. I do need a return
25 call from you today, toll free is 1-877-209-4155 and extension 225.

26 Dkts. #3 at ¶ 15 and Ex. A and #5 at ¶ 15. The second message was as follows:

27 Hi, this message is for Asaf Erez, this is Ruben with Chad Steur Law office.
28 If you could please give us a call at 877-209-4155, my extension number is
252. Thank you.

1 Dkts. #3 at ¶ 15 and Ex. B and #5 at ¶ 15.

2 On September 11, 2012, Adam Hill, an attorney, sent an email to Chad Steur alerting
3 him that he represented Mr. Erez, alleging that the two voice mails violated FDCPA and
4 seeking resolution of the matter. Dkt. #29-2, Ex. C. Defendants responded to counsel on
5 September 26, 2012, acknowledging the communication from Mr. Hill. Dkts. #3 at ¶ 21 and #5
6 at ¶ 21. Despite Plaintiff's representation by counsel, Defendants subsequently sent a letter
7 directly to Plaintiff on October 3, 2012, in an attempt to collect the alleged debt. Dkts. #3 at ¶
8 22, #5 at ¶ 22 and #30, Ex. A. Defendants also placed two more phone calls to Plaintiff, on
9 December 3 and 5, 2012, which stated, respectively:
10

11 Asaf Erez, Mandy with Steur Law Office, return my call today toll free 1-
12 800-460-6141, extension 221.

13 Asaf Erez, Mandy with Steur Law Office, would you return my call today
14 toll free 1-800-460-6141, extension 22 . . .

15 Dkts. #3 at ¶ 24 and Exs. D and E, #5 at ¶ ¶ 24 and 26, and #30, Ex. A.

16 IV. DISCUSSION

17 Plaintiff now moves for summary judgment on two bases: first, he asserts that
18 Defendants violated FDCPA by continuing to contact him even after they knew he was
19 represented by counsel; and second, that Defendants' failure to identify themselves as debt
20 collectors in the four voice mails left after May 2012 also violated FDCPA because they were
21 deceptive. Defendants also cross-move for summary judgment with respect to the attempted
22 contacts with Plaintiff after learning he was represented by counsel under the *bona fide* error
23 defense. In addition, they argue that the failure to identify themselves as debt collectors in the
24 voice mails was of no import because Plaintiff knew who they were and why they were calling.
25
26
27
28

A. FDCPA Claim

Plaintiff alleges that Defendant violated § 1692e of the FDCPA by using false, deceptive or misleading representations or means in connection with the collection of a debt. Dkt. #3 at ¶¶ 28 b. and c. Specifically, Plaintiff alleges that Defendant violated § 1692e(10) of the FDCPA by using deceptive means in an attempt to collect a debt, and that Defendant violated § 1692e(11) of the FDCPA because Defendants failed to disclose in a communication with Plaintiff that they are debt collectors. *Id.*

“[T]he FDCPA is a remedial statute aimed at curbing what Congress considered to be an industry-wide pattern of and propensity towards abusing debtors.” *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162, 1171 (9th Cir. 2006). It prohibits and imposes strict liability and both statutory and actual damages for a wide range of abusive and unfair practices. *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010). The Ninth Circuit has continuously instructed that the FDCPA is to be construed liberally in favor of the consumer. *Id.*

Section 1692e of the FDCPA prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. The statute provides a non-exhaustive list of conduct that is a violation of § 1692e, including:

The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

1 15 U.S.C. § 1692e(11). Most courts that have considered the issue have concluded that
2 “voicemails are communications that must conform to the disclosure requirements of section
3 1692e(11).” *Lensch v. Armada Corp.*, 795 F. Supp. 2d 1180, 1189 (W.D. Wash. 2011)
4 (collecting cases, including those within the Ninth Circuit).

5 A debt collector’s liability under § 1692e is an issue of law for the Court. *Gonzales v.*
6 *Arrow Financial Servs., Inc.*, 660 F.3d 1055, 1061 (9th Cir. 2011). When determining whether
7 certain conduct violates § 1692e, the Court undertakes an objective analysis, and considers
8 whether “the least sophisticated debtor would likely be misled by a communication.”
9 *Donohue*, 592 F.3d at 1030. Because the FDCPA is a remedial statute, it is construed liberally
10 in favor of the consumer.
11

12 In this case, although the plain language of § 1692e(11) requires a debt collector to
13 identify him- or herself as such in all communications following the initial communication with
14 a consumer, and it is undisputed that Defendants failed to do so with respect to the voicemail
15 messages at issue in this matter, Defendants appear to argue that summary judgment should not
16 be granted in favor of Plaintiff because he was fully aware that Chad Steur Law Office was a
17 debt collector. *See* Dkts. #29, #32 and #33. The Court is not persuaded.
18

19 The Courts of the Ninth Circuit have held that the failure of a debt collector to identify
20 himself as such in *all* communications following the initial communication with a consumer is
21 a violation of § 1692e(11). *See, e.g., Forkum v. Co-Operative Adjustment Bureau, Inc.*, U.S.
22 Dist. LEXIS 70693 (N.D. Cal. May 21, 2014); *Pasquale v. Law Offices of Nelson & Kennard*,
23 940 F.Supp.2d 1151, 1158 (N.D. Cal. 2013); *Savage v. NIC, Inc.*, 2009 U.S. Dist. LEXIS
24 65071 (D. Ariz. July 28, 2009); *Schwarm v. Craighead*, 552 F. Supp.2d 1056 (E.D. Cal. 2008);
25 *Hosseinzadeh v. M.R.S. Associates., Inc.*, 387 F.Supp.2d 1104, 1116 (C.D. Cal. 2005). Further,
26
27
28

1 the Court finds that the clear and unambiguous language of the FDCPA requires a debt
2 collector to identify himself as such in all subsequent communications with a consumer.
3 Defendants have failed to cite any controlling authority or provide persuasive legal analysis
4 demonstrating that summary judgment is not appropriate in this case, where they admit that
5 they did not identify themselves as debt collectors. Accordingly, Plaintiff's motion for
6 summary judgment on his FDCPA claim is GRANTED to the extent that it is brought under §
7 1692e(11).
8

9 Plaintiff next argues that Defendants violated § 1692e(10) as a matter of law for the
10 same reasons Defendants violated § 1692e(11). Dkt. #30 at 10-1. The Court disagrees.
11 Section 1692e(10) has been referred to as a "catchall" provision. *Gonzales*, 660 F.3d at 1062.
12 The provision prohibits "[t]he use of any false representation or deceptive means to collect or
13 attempt to collect any debt or to obtain information concerning a consumer." 15 U.S.C. §
14 1692e(10). As the Northern District of California has also held under similar circumstances,
15 the Court finds that Plaintiff has failed to sustain his burden showing that he is entitled to
16 summary judgment on this claim. *See Forkum, supra*. While Defendants' failure to identify
17 themselves as debt collectors in violation of § 1692e(11) is arguably a "deceptive" means to
18 attempt to collect a debt, Plaintiff has not provided this Court with any persuasive legal analysis
19 demonstrating that Defendants violated § 1692e(10). Accordingly, Plaintiff's motion, to the
20 extent it is brought under 15 U.S.C. § 1692e(10), is denied and Defendants' motion for
21 summary judgment on that part of Plaintiff's claim is granted.
22
23
24

25 **B. Bona Fide Error**

26 Plaintiff also moves for summary judgment on the alleged violation of 15 U.S.C. §
27 1692c(a)(2), on the basis that Defendants violated that provision by communicating with
28

1 Plaintiff after Defendants knew Plaintiff was represented by an attorney. Dkt. #3 at ¶ 28 a.
2 Defendants have cross-moved under a *bona fide* error defense. Dkt. #29.

3 While FDCPA makes debt collectors liable for violations that are not knowing or
4 intentional, it provides a “narrow exception to strict liability,” for *bona fide* errors. *Reichert v.*
5 *National Credit Systems, Inc.*, 531 F.3d 1002, 1005 (9th Cir. 2008). The statutory *bona fide*
6 error defense provides:
7

8 A debt collector may not be held liable in any action brought under this
9 subchapter if the debt collector shows by a preponderance of evidence that
10 the violation was not intentional and resulted from a *bona fide* error
11 notwithstanding the maintenance of procedures reasonably adapted to avoid
12 any such error.

13 15 U.S.C. § 1692k(c). On such a defense, the debt collector has the burden of proof. *Reichert*,
14 531 F.3d at 1006. The defense requires the defendant to show that it maintains procedures to
15 avoid errors. *Id.* A debt collector fails to meet its burden under the defense when it does not
16 produce evidence of “reasonable preventive procedures” aimed at avoiding the errors. *Id.*

17 In this case, despite Plaintiff’s arguments to the contrary, the Court finds that
18 Defendants have provided sufficient evidence to meet their burden.¹ See Dkt. #29-2 and
19 Exhibits thereto. Defendants have provided evidence that they utilize a computer program
20 called Debt Master to track activities related to debt collection. *Id.* Defendants have also
21 provided evidence that their typical policy and practice is to enter attorney information into the
22 software system, which stops debt collection communication with the alleged debtor. *Id.*
23 Finally, Defendants have provided evidence that the continued communication in this case
24 occurred because of a clerical error, not an intentional effort to continue to communicate with
25

26
27 ¹ The Court disregards Plaintiff’s suggestions that Defendants withheld certain discovery in
28 this matter. If Plaintiff had wanted to challenge the sufficiency of discovery responses by
Defendants, he had ample opportunity to do so prior to the discovery motion deadline.
However, he did not do so.

1 Plaintiff as an end run about counsel. *Id.* Accordingly, Defendants' motion for summary
2 judgment on their *bona fide* error defense is granted and Plaintiff's cross-motion regarding the
3 same is denied.

4 **C. Damages, Costs, and Attorney's Fees**

5 Finally, a Defendant debt collector who fails to comply with any provision of the
6 FDCPA is liable to the Plaintiff in an amount equal to the sum of: (1) any actual damages
7 sustained as a result of such failure; (2) any additional damages as the court may allow, but not
8 exceeding \$1,000; and (3) costs of the action, together with reasonable attorney's fees. 15
9 U.S.C. § 1692k(a). In determining the amount of liability, the court must consider, *inter alia*,
10 the frequency and persistence of noncompliance by the debt collector, the nature of such
11 noncompliance, and the extent to which such noncompliance was intentional. 15 U.S.C. §
12 1692k(b)(1). Here, neither party has provided argument or evidence with respect to damages,
13 costs, or attorney's fees. As a result, the Court cannot rule on such at this time. Therefore, the
14 Court directs the parties to provide briefing on this issue so that damages may be appropriately
15 determined, as set forth below.

16 **V. CONCLUSION**

17 Having reviewed the parties' cross-motions for summary judgment, the responses
18 thereto and replies in support thereof, along with all supporting declarations and exhibits and
19 the remainder of the record, the Court hereby finds and ORDERS:

- 20 1. Defendants' Motion for Summary Judgment (Dkt. #29) is GRANTED IN PART
21 and DENIED IN PART. To the extent that Plaintiff's FDCPA claims are based on
22 15 U.S.C. § 1692e(10) and 15 U.S.C. § 1692c(a)(2), those claims are DISMISSED.
23
24
25
26
27
28

- 1 2. Plaintiff's Motion for Summary Judgment (Dkt. #30) is GRANTED IN PART AND
2 DENIED IN PART. The Court finds that Defendant is liable for violations of 15
3 U.S.C. § 1692e(11) as set forth above.
- 4 3. **Within fourteen (14) days from the date of this Order**, Plaintiff shall file a
5 Motion for Award of Damages, not to exceed six (6) pages, addressing his
6 entitlement to damages, costs, and attorney's fees. Plaintiff shall note the Motion
7 for consideration no later than two Fridays after the motion is filed. Defendants
8 shall file a response, not to exceed six (6) pages, no later than the Monday prior to
9 the noting date. **No reply shall be filed**. Upon the completion of briefing, the Court
10 will take this matter under consideration without oral argument.
- 11 4. Should the parties fail to file any briefing regarding damages within the timeframe
12 above, the CLERK shall CLOSE this matter.
- 13
14

15 DATED this 13th day of November 2014.

16
17 

18 RICARDO S. MARTINEZ
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28